IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8430 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R. TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HANIFABIBI W/O AHMEDMIYA SHAUKATALI KARIMMIYA

Versus

KANUBHAI GOKALDAS SHAH

Appearance:

MR JITENDRA M PATEL for Petitioners

MR MC SHAH for Respondent No. 1

NOTICE SERVED for Respondent No. 2

Mr.K.P. Raval, ASSTT GOVERNMENT PLEADER for Respondent No. 3

CORAM : MR.JUSTICE RAVI R. TRIPATHI

Date of decision: 23/02/2001

ORAL JUDGEMENT

The present petition is filed by one Smt.Hanifabibi, Widow of Ahmedmiya Shaukatali Karimmiya (since she expired, her heirs were brought on record) and

others against Shri Kanubhai Gokaldas Shah, who having expired, his heirs are also brought on record along with heirs of Bai Fatma, widow of Adambhai, who also expired during pendency of this petition, whose heirs are also on record.

2. The case of the petitioners is that the petitioners are the transferees of the land bearing Survey No.124 of village Mahmedabad, which originally admeasured 3 acres and 6 gunthas, but remained to be 2 acres, 12 gunthas after some acquisition from the said Survey No. The case of the petitioners is that the authorities have passed an order of taking possession of land from the petitioners under sec.37(1A) though the said subsection was inserted in the Bombay Tenancy and Agricultural Lands Act, 1948 only in the year 1973 by Amending Act V of 1973. Thereafter, the petitioners had filed an appeal before the Deputy Collector being Tenancy Appeal No.154 of 1986, which came to be decided on 25.11.1986. The Deputy Collector passed an order to the effect that the appeal is accepted. The application of respondent no.1, Shri Kanubhai Gokaldas Shah dated 8.11.1985 is rejected and the order of the lower authority (Mamlatdar & ALT) dated 6.2.1986 is also cancelled. Being aggrieved of this the present respondents had filed a revision application before the Gujarat Revenue Tribunal, Ahmedabad ("the Tribunal" for brevity) being No.TEN IA No.70/ 80 which came to be allowed by judgement dated 16.9.1991.

3. Mr.Patel, learned advocate for the petitioners pointed out that the authorities below have erred in complying with the provisions of sec.37(1A) of the Act though the transaction was that of the year 1968. Mr. Patel submitted that the authorities ought to have applied law as it stood in the year 1968.

4. Mr.Shah, learned advocate appearing for the respondents fairly submitted that there cannot be any dispute regarding application of law as it stood on the date of the transaction.

5. In view of the aforesaid discussion it is deemed fit that the judgement and order of the authorities are hereby quashed and set aside and the authorities are directed to decided the matter afresh taking into consideration the provisions of law as stood on the date of the transaction and to be precise in the year 1968. The Mamlatdar & ALT is directed to decide the matter as early as possible, but not later than six months from the date of receipt of writ of this Court.

6. The petition is allowed. Rule is made absolute to the aforesaid extent with no order as to cost.

(Ravi R. Tripathi, J.)

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